

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOKESH S. TANTUWAYA,

Petitioner,

v.

BRIAN BIRKHOLZ,

Respondent.

Case No. CV 24-02891-DMG (MAR)

ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the records on file, and the Report and Recommendation of the United States Magistrate Judge. The Court has reviewed *de novo* the portions of the Report to which objections have been made.

The Report recommends the grant of the Petition and the recalculation of Petitioner's earned time credits ("ETCs") under the First Step Act ("FSA"). [Doc. # 19.] Respondent's objections to the Report [Doc. # 20] do not warrant a change to the Magistrate Judge's findings and recommendation.

Respondent objects to the Report's finding about Petitioner's participation in FSA programming. Specifically, Respondent objects to the Report's finding that Petitioner "completed thirteen days of FSA programming between April 26 and May 9, [2023], even though Petitioner did not receive any ETCs as a result." [Doc. # 20 at 4; *see also* Doc. # 19 at 7.] According to Respondent, Petitioner did not actually

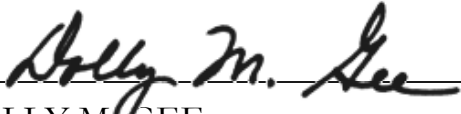
1 participate in the programming, but he received the ETCs covering that period “for
2 doing nothing at all” and “nonetheless earned ETCs for those thirteen days, and those
3 are included in his ETC calculation.” [Doc. # 20 at 5.]

4 Respondent’s argument about these days does not undermine the Report’s
5 findings and recommendation. It ultimately remains the case that “Respondent
6 concedes that Petitioner did not have an opportunity to participate in programs
7 between his sentencing date of December 9, 2022, until April 26, 2023, when he
8 arrived at his designated institution[.]” (*Id.* This delay of four and a half months is
9 “far longer than the ‘reasonable’ five-week period” found in another case discussed in
10 the Report. [Doc. # at 7 (citing *Stevens v. Jacquez*, 2024 WL 3200546, at *5 (D. Or.
11 June 25, 2024).] Because Petitioner did not wait just “a month or two” for his
12 opportunity to participate in programming, his ETCs should be calculated from his
13 sentencing date. (*Id.* at 7-8 (citing *Huibui v. Derr*, 2023 WL 4086073, at *7 (D. Haw.
14 June 20, 2023).) Thus, the Bureau of Prisons shall recalculate Petitioner’s ETCs from
15 the date his sentence commenced on December 9, 2022. (*Id.* at 9.)

16 The Court accepts the findings and recommendation of the Magistrate Judge.

17 **IT IS THEREFORE ORDERED** that judgment be entered **GRANTING**
18 Petitioner’s petition and **ORDERING** Respondent to recalculate Petitioner’s
19 sentence utilizing December 9, 2022, as the correct date on which Petitioner became
20 eligible to earn FSA credits.¹

21 DATED: November 15, 2024

22 
23 DOLLY M GEE
24 Chief United States District Judge
25
26

27 ¹ The Court is not ordering Respondent to automatically award Petitioner with 52 credits for the
28 period from December 9, 2022 to May 9, 2023. Rather, the Court orders Respondent to award
Petitioner with all credits he may have earned between December 9, 2022 to May 9, 2023.